In the
Supreme Court of the United States

No. 941

THE DAHLBERG COMPANY, a corporation,

Respondent,

vs.

LORS HEARING AID CENTER, LTD., a corporation,

Petitioner.

THE DAHLBERG COMPANY, a corporation,

Respondent,

vs.

WESTERN COMPANY, INCORPORATED, an Oregon

Petitioner.

THE DAHLBERG COMPANY, a corporation,

Respondent,

vs.

BEVERLY HEARING CENTER, INC., a corporation,

Petitioner.

OPPOSING BRIEF OF RESPONDENT

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In the
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No. 931

THE DAHLBERG COMPANY, a corporation
Respondent

vs.

WESTERN HEARING AID CENTER, LTD., a corporation
Petitioner

THE DAHLBERG COMPANY, a corporation
Respondent

vs.

DAHLBERG WESTERN COMPANY, INCORPORATED, an Oregon corporation
Petitioner

THE DAHLBERG COMPANY, a corporation
Respondent

vs.

OREGON HEARING CENTER, INC., a corporation
Petitioner

OPPOSING BRIEF OF RESPONDENT

Respondent submits the following in opposition to the petition for writ of certiorari.

OPINION BELOW

Petitioners correctly cite the unofficial report of the opinion of the Minnesota Supreme Court in 107 N. W. 2d 381. However, the notice served by petitioners on counsel for respondent pursuant to Rule 33 (3) (b) of

this Court makes no mention indicating that the judgment of the Minnesota Supreme Court has been included in the transcript or a certified copy appended to the petition as required by Rule 23 (1) (j). Accordingly, we append a certified copy of the judgment of the Minnesota Supreme Court to this brief as Appendix A. Petitioners were defendants and respondent was plaintiff below.

Jurisdiction—Objection Thereto By Respondent

Petitioners invoke the jurisdiction of this Court under Section 1257 (3) of *28 U. S. C. A.* which clearly provides for review in this Court by certiorari of final judgments or decrees rendered by the highest court of the state in which a decision could be had. Respondent objects to jurisdiction of this Court on the ground that no final judgment has been rendered by the Supreme Court of Minnesota.

The judgment of the Minnesota Supreme Court simply affirmed an order of the trial court denying petitioners' motions to quash service of process and to dismiss six separate actions which were consolidated for hearing in the trial court. This is apparent from the opening sentence of the opinion of the Minnesota Supreme Court. It is also apparent from the order of the trial court found in the printed transcript of the record below at pages 23-24,[1] and the judgment of the Minnesota Supreme Court attached as Appendix A.

Petitioners' motions to quash service of the process were interposed immediately following the service of the summonses and complaints on the secretary of state by re-

[1] Parenthetically, it is pointed out that the numerical references within parenthesis hereinafter set out are to the pages and folio of the printed transcript where the matter cited will be found.

spondent pursuant to Section 303.13, Subd. 1 (3), *Minnesota Statutes Annotated, Supplement,* and before petitioners interposed any other defenses by answer to the merits (R. pp. 2, 4, 6, 9, 12, 14). This was done pursuant to Rule 12.02 of the *Rules of Civil Procedure* for the district courts of Minnesota which permits the defendant at his option to raise lack of jurisdiction over the person by motion prior to any further responsive pleading by way of answer. The district court is required by Rule 12.04 to hear such plea prior to trial upon application of any party unless the court orders that the hearing and determination thereof be deferred until the trial.[2]

Rule 12.01 of said *Minnesota Rules of Civil Procedure* also provides that if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading must be served within 10 days after service of a notice of the court's action. Petitioners who were defendants below, chose to interpose the defense of lack of jurisdiction by motion brought on for hearing prior to trial and before interposing any other defenses by answer. The motions were consolidated and heard on affidavits in support (R. pp. 10, 12, 15) and in opposition to the motion (R. pp. 16-23). Upon denial of their motions to quash, petitioners chose to appeal from the order denying their motions. In Minnesota, an order denying a motion to quash service of process for lack of jurisdiction over the person is appealable under Section 605.09 (3), *Minnesota Statutes Annotated,* which provides for appeal by the aggrieved party, "From an order involving

[2] Rules 12.02 and 12.04 correspond to Rules 12 (b) and 12 (d) of the Federal Rules of Civil Procedure. Minnesota adopted rules of civil procedure substantially the same as the Federal rules on January 1, 1952. See Rule 86.01 of said Minnesota Rules, vol. 27A, *Court Rules Minnesota Statutes Annotated.*

the merits of the action or some part thereof."[3] An order denying a motion to quash service of process is regarded as an order "involving the merits," because it would require a defendant to undertake the trouble and expense of a trial in a court which may lack jurisdiction. *Curran v. Nash* (1947), 224 Minn. 571, 29 N. W. 2d 436, 174 A. L. R. 411; *Butts v. Geisler* (1954), 242 Minn. 154, 64 N. W. 2d 147; *Piano Mfg. Co. v. Kaufert* (1902), 86 Minn. 13, 89 N. W. 1124; *37 Minnesota Law Review* 309, 324-325. It is apparent from the foregoing that an order over-ruling a motion to quash service of process for alleged lack of jurisdiction over the person is interlocutory. It is simply a preliminary step in the proceedings. An order over-ruling such motion does not complete the litigation but simply removes an obstacle to proceeding with the main event consisting in a trial on the merits. In the case at bar, the Supreme Court of Minnesota simply entered judgment affirming with costs the order of the trial court over-ruling petitioners' consolidated motions to quash the service. See Appendix A attached hereto. On February 7, 1961, the consolidated cases were remitted to the trial court where defendants were thereafter free to answer to the merits under Rule 12.01 of the *Minnesota Rules of Civil Procedure* within 10 days after notice of the court's decision.

It was held many years ago by this Court that it would not entertain a writ of error to the Supreme Court of Minnesota for review of an interlocutory order made at the pleading stage of litigation for the reason that there

[3] Such statutory provision appears to be found in the laws of many states. It is generally regarded as an exception to the general rule providing for appellate review from the final judgment only. *Carleton M. Crick*, "The Final Judgment as a Basis for Appeal", *41 Yale L. Journal* 539, 552, footnote no. 64.

was no final judgment. *Holcombe v. McKusik* (1858), 61 U. S. 552. In that case, defendant demurred to a portion of plaintiff's reply to his answer. The trial court sustained the demurrer, and plaintiff appealed from the order of the trial court sustaining the demurrer by striking out portions of his reply. The Supreme Court of the territory of Minnesota entertained the appeal from the order under an early territorial statute permitting appeal "from the district to the Supreme Court on an interlocutory order affecting the merits.", and it affirmed the trial court. However, this Court refused to issue the writ of error, pointing out that the judgment of the Supreme Court of Minnesota affirming the order below did not dispose of the whole matter in controversy; that portions of the reply left standing by the order below raised issues of law and fact calling for determination by a trial on the merits; and that it was settled law that the writ of error would lie only from a final judgment which determined the whole of the matters in controversy.[4] Likewise, this Court will not review a judgment of the court of last resort of a state which simply affirms an order of the trial court over-ruling a demurrer to a complaint or sustaining a demurrer with leave to plead over. The reason is that the judgment is not final, because the aggrieved party may answer or otherwise plead over. *Meagher v. Minnesota Thresher Manufacturing Co.* (1892), 145 U. S. 608; *Werner v. Charleston* (1894), 151 U. S. 360; *Clark v. Kansas City* (1898), 172 U. S. 334; *Missouri & Kansas R. Co. v. Olathe* (1911),

[4] Although the writ of error was abolished as a vehicle of appellate review to this Court by the Act of September 6, 1916, ch. 448, 39 Stat. at L. 726, 28 U.S.C. Section 344, and writ of certiorari substituted, nevertheless, the finality of judgments rule was in no way affected. Certiorari will not issue to the court of last resort of a state unless there is a final judgment. See *Bruce v. Tobin* (1917), 245 U. S. 18; *Philadelphia & R. Coal & I. Co. v. Gilbert* (1917), 245 U. S. 162, infra.

222 U. S. 185; see *Jung v. K & D Mining Co.* (1958), 356 U. S. 335, 337; and see notes in 89 L. Ed. 1192 and 97 L. Ed. 214. The only exception appears to be in the case where it clearly appears that the party aggrieved has no other defense to interpose and that the order over-ruling the demurrer puts a complete end to the case. *Pope v. Atlantic Coast Line R. Co.* (1952), 345 U. S. 379.

In our research, we could find no case where this Court reviewed a judgment of a court of last resort of a state which simply affirmed an order of a trial court over-ruling a motion to quash service. The only cases which we could find show that this Court has been called upon to consider state jurisdiction over the person only upon the final judgment rendered after a trial on the merits which followed the denial of the motion to quash service of process: *Harkness v. Hyde* (1878), 98 U. S. 476; *Philadelphia & R. Coal & I. Co. v. Gilbert* (1917), 245 U. S. 162. The party aggrieved by the over-ruling of a motion objecting to jurisdiction suffers no prejudice in Minnesota by thereafter going to trial on the merits, because he does not waive his jurisdictional objection by going to trial after his plea to jurisdiction is over-ruled. *Sellars v. Sellars* (1936), 196 Minn. 143, 264 N. W. 425; *Guy v. Dictating Machine & Record Co.* (1941), 208 Minn. 534, 537, 294 N. W. 877; see *Moorehart v. Furley* (1921), 149 Minn. 56, 57, 182 N. W. 723; *State ex rel. Peter Adent v. Industrial Commission* (1951), 234 Minn. 567, 48 N. W. 2d 42; see also Rule 12.01 of the *Minnesota Rules of Civil Procedure*. In this respect, Minnesota is in line with the majority rule prevailing in other states and in the federal courts. See note in *62 A. L. R.* 2d 937, 941-948.

In the instant case, the judgment of affirmance entered

by the Supreme Court of Minnesota on February 7, 1961, left standing the order of the trial court made on November 30, 1959 over-ruling petitioners' motions to quash service for lack of jurisdiction over their persons. Under Rule 12.01 of the *Minnesota Rules of Civil Procedure*, petitioners had 10 days from the service of notice of the court's order to answer. Although counsel for respondent did serve a notice of the order of the trial court denying the motions to quash on counsel for petitioners by mail on December 2, 1959, and the clerk of the Minnesota Supreme Court served the notice, required by Rule XIV of that Court (27A *Minnesota Statutes Annotated*, p. 31), nevertheless, professional courtesy in Minnesota 'would forbid counsel for respondent to enter judgment of default' against petitioners, unless petitioners' counsel made it clear to counsel for respondent that petitioners intended to interpose no defenses other than lack of jurisdiction over the person. See *Cahaley v. Cahaley* (1943), 216 Minn. 175, 179-180, 12 N. W. 2d 182. Petitioners have never made it known to respondent or its counsel whether they do intend to interpose other defenses in addition to lack of jurisdiction, and the record is devoid of any indication of the intent of petitioners in this regard. If they do make it clear to respondent that they intend to interpose no defenses other than lack of jurisdiction, then, under the doctrine of *Pope v. Atlantic Coast Line R. Co.*, 345 U. S. 379, *supra*, the judgment of the Minnesota Supreme Court may be regarded as final. Absent a clear statement to that effect on the part of petitioners, the judgment of the Supreme Court of Minnesota lacks finality. We see no reason of great public concern which would otherwise prompt any departure from the long-standing rule and policy of this Court which strongly favors review of state court action from final judgments only.

See *Republic Natural Gas Co. v. Oklahoma* (1947), 334 U. S. 62, 67-69; *Gospel Army v. Los Angeles* (1946), 331 U. S. 543, 548; cf. *Radio Station WOW v. Johnson* (1940), 326 U. S. 120, 123-124.

STATEMENT OF CASE

I.

Procedural history of case.

Petitioners correctly state the procedural history in the main part, but they are not entirely correct in stating that they have no further remedy by appellate review in Minnesota. As we have pointed out, *supra* in our objection to jurisdiction, petitioners have the right to interpose other defenses by answer under Rule 12.01 of the *Minnesota Rules of Civil Procedure*, and to be heard at a trial on the merits. After final judgment is entered by the trial court following the trial on the merits, petitioners may again appeal from the final judgment to the Supreme Court of Minnesota. If it should appear from the record made on the trial of the merits that the facts differ from those set out in the affidavits upon which the motion to quash was heard, the Supreme Court of Minnesota will again consider the jurisdictional point originally raised on the motion to quash. True, the order over-ruling the motion to quash affirmed by the Supreme Court of Minnesota has become the law of the case in respect to those facts set out in the affidavits for and against the motion, but this in no way precludes petitioners from endeavoring to show different facts if they can, upon the trial. See *First State Bank of Odessa v. First State Bank* (1927), 172 Minn. 223, 225, 214 N. W. 781. *Nees v. Minneapolis Street Ry. Co* (1946), 221 Minn. 396, 22 N. W. 2d 164; *In re Estate of Henry*

Hartz (1953), 238 Minn. 558, 559, 58 N. W. 2d 57. See also the comments of this Court in *Gospel Army v. Los Angeles*, 311 U. S. 543, 547-548 *supra*.

II.

Facts material to the question presented.

Petitioners' statement of the material facts is substantially correct, but it does not adequately cover those facts of record which show the nature, character and extent of the petitioners' contacts with respondent in Minnesota.

Petitioners are inter-related Oregon corporations possessing common officers, directors and stockholders who, in turn, are related by blood or other family ties to Harold S. Jones who is an officer, director and general manager of all of the petitioning corporations (R. p. 19, f. 3 to p. 20, f. 2). The dominant petitioner is Dahlberg Western Company, Inc., which had a written distributor contract with respondent which was made and executed in Minnesota on October 1, 1958 (R. p. 20, f. 3; Exhibit A, attached to the transcript of the record at p. 39). The contract was renewable automatically for one year periods unless notice of termination was given by either party sixty days prior to any anniversary date (R. p. 39; Exhibit A, parag. 10). Petitioner agreed to maintain adequate sales, service, and storage facilities and agreed to use its best efforts to sell and promote the respondent's products and agreed to submit orders in writing to respondent for acceptance or refusal at its place of business in Minnesota (R. p. 39; Exhibit A, parags. 3, 4). Petitioner agreed that it would operate in accordance with respondent's published policies and procedures; that it would report each sale of Dahlberg products immediately following a sale; and that it would buy Dahlberg products for resale in its

trade territory comprising Washington, Oregon and a part of British Columbia (Exhibit A, parags. 1, 9; also R. p. 20). A second agreement was also entered into by said petitioner with respondent on October 1, 1958, called "Basic Quota Agreement" (R. p. 20, f. 3; p. 39; Exhibit B). According to this second agreement, petitioner agreed to buy at least $3,800 worth of hearing aids at distributor's prices each month (Exhibit B, parag. 5). It also agreed to cooperate in formulating respondent's policies, procedures, sales and promotion programs; it agreed to participate with respondent in advertising, to maintain a good credit rating, and to submit financial information when requested by respondent (Exhibit B, parag. 2). Petitioner also agreed orally to supervise, direct and manage the sales and distribution of Dahlberg hearing aid products to other dealers and distributors in its territory, in consideration of which respondent promised to pay said petitioner a commission of seven per cent on all hearing aid products purchased from respondent in Minneapolis by hearing aid dealers and distributors for resale in the aforementioned trade territory (R. p. 21, ff. 1-2). The hearing aid products were deliverable f.o.b. respondent's plant in Minneapolis, Minnesota (R. p. 39; Exhibit A, parag. 5). In the performance of these agreements, there resulted frequent and continuous business contacts between respondent and all of the petitioners in Minnesota such as: (a) the filling of orders received from petitioners at respondent's plant in Golden Valley,[5] Minneapolis, Minnesota; (b) the delivery of the hearing aid products to petitioners in Minnesota f.o.b. respondent's plant in Golden Valley, Minneapolis, Minnesota; (c) the frequent attend-

[5] Golden Valley is a suburban village contiguous to the city of Minneapolis, and its post-office address is Minneapolis.

ance of Harold S. Jones, the officer and general manager of petitioners, at the office of respondent's plant in Golden Valley, Minneapolis, Minnesota; (d) the making and executing of agreements between the parties at respondent's office in Minnesota relating to the financing of the purchase of hearing aid products by petitioners and other dealers within the trade territory (R. pp. 21-22). As a consequence of the aforementioned contacts between respondent and petitioners, these activities and events took place in Minnesota: regular receipt of reports relating to hearing aid products sold by petitioners, receipt of payment for products sold, receipt of customer lists, receipt of monthly financial statements, and the receipt of hearing aids for repairs and parts (R. p. 22, f. 3). The promissory notes forming the subject matter of five of the instant cases grew out of the aforementioned business contacts of petitioners with respondent in Minnesota. The promissory notes were executed and delivered by petitioners to respondent in Minnesota and are payable in Minnesota (R. pp. 22-23). The open account purchase of hearing aids, which forms the subject matter of the sixth of the instant cases, also grew of said business contacts and the hearing aids were delivered to petitioner, Dahlberg Western Company, Inc., f.o.b. respondent's plant in Minnesota (R. p. 18, f. 1).

ARGUMENT

Certiorari should be denied because the decision of the Supreme Court of Minnesota in the instant cause is in accord with applicable decisions of this Court.

As a rule of general guidance for those who would seek review of a judgment of a state court on certiorari from this Court, it is said that it should appear that the

state court has decided a federal question in a way probably not in accord with applicable decisions of this Court. Rule 19, parag. 1, subparag. (a). The decision of the Supreme Court of Minnesota is not contrary to the applicable decisions of this Court, but rather is in accord with those decisions.

The decision below is in accord with the "minimal contact" test of state jurisdiction over non-residents laid down in *International Shoe Co. v. Washington* (1945), 326 U. S. 310, 316. It is also in accord with *McGee v. International Life Insurance Co.* (1957), 355 U. S. 220; cf. *Hanson v. Denckla* (1958), 357 U. S. 235.

The only decision of this Court to which petitioners can point where there may be a semblance of discord is *Rosenberg Bros. & Company v. Curtis Brown Co.*, 260 U. S. 516, which was decided in 1923 or some twenty-three years prior to *International Shoe*. The *Rosenberg* case was decided on the basis of the so-called "presence theory" of state jurisdiction over non-resident corporations. The "presence theory" has long since been superseded by the more flexible concept of "minimal contacts" expressed for the first time in the year 1945 in *International Shoe*.

Petitioners argue that the purchasing activities by a foreign corporation in the forum state are to be distinguished from sales activities in the forum state; that purchasing activities of a non-resident corporation no matter how well established or continuous or extensive, cannot be regarded as contacts of a character justifying the assumption of jurisdiction over the non-resident by the forum state to enforce contacts made by the non-resident with citizens in the forum state; and that a state service of process statute which would permit the assumption of jurisdiction over a non-resident corporation to enforce contracts

tract growing out of such purchasing activities would deny due process to such non-resident. They would construe *Rosenberg* as expressive of such a sweeping and absolute state of the law of jurisdiction *in personam* both before and after *International Shoe*.

However, such was not the state of the law either before or after *International Shoe*. Before *International Shoe* it was held that purchasing activities of a foreign corporation in the State of New York justified assumption of jurisdiction by New York where such activity was continuous, extensive, and conducted from a fixed locale. *Sterling Novelty Corp. v. Frank & Hirsch D. Co.* (1948), 299 N. Y. 208, 86 N. E. 2d 564, 12 A. L. R. 2d 1435. In the last cited case, it is significant that the New York court distinguished *Rosenberg* as presenting a situation where the foreign corporation came only intermittently or sporadically to New York on buying missions and without any fixed locale. The annotation following *Sterling Novelty Corp.* in 12 A. L. R. 2d 1439 points to many additional situations where purchasing activities of a foreign corporation within the forum state had justified the assumption of jurisdiction prior to *International Shoe*. In Minnesota, it was held before both *Rosenberg* and *International Shoe* that purchasing activities of a foreign corporation in Minnesota justified the assumption of jurisdiction over the person of such corporation to enforce contracts which had grown out of such purchasing activity and which had been made and were to be performed in Minnesota. *Duluth Logging Co. v. Pulpwood Co.* (1917), 137 Minn. 312, 163 N. W. 520; *Massey v. Corsumer Hay Co.* (1931), 184 Minn. 196, 238 N. W. 327.

A case arising in California subsequent to *International Shoe* expresses what would seem to be the proper per-

spective toward the *Rosenberg* decision. *Henry R. Jahn & Son, Inc. v. Superior Court* (1958), 49 Cal. 2d 855, 323 P. 2d 437. In that case, the American Drying Systems, Inc., a California corporation, brought suit against Henry R. Jahn & Son, Inc., a New York corporation, and two individual defendants, claiming that the defendant corporation, hereinafter called Jahn for brevity, had conspired with the individual defendants to cause a breach of exclusive distribution contracts with certain of its South American distributors. The defendant corporation, Jahn, was the exclusive export agent for plaintiff's grain driers in New York. It placed orders with plaintiff by mail or telegram from New York. The driers were delivered to Jahn f.o.b. California or sent to a forwarding company in California. On only one occasion did Jahn send an agent to California, and this was an auditor who delivered a check to plaintiff for a large purchase of driers. Process was served on the Secretary of State of California pursuant to a statute authorizing service on that official where a return is made to the court reciting that the foreign corporation cannot be found in the jurisdiction. The defendant corporation, Jahn, applied for a writ from the Supreme Court to direct the superior court to quash service, a procedure followed in California which calls for initial decision by the trial court and which is then reviewed by the Supreme Court. The superior court set aside the service, but the Supreme Court reversed. The same argument was made by defendant Jahn as the petitioners are now urging, namely, that Jahn was a New York corporation without property, agents, or office in California and had engaged in no business there except purchasing plaintiff's products for resale in the South American market. Jahn supported its argument by relying on the *Rosenberg* case.

In rejecting Jahn's argument, the Supreme Court of California said (323 P. 2d at p. 440):

> "Jahn's purchase of goods in this state is a regular part of its business. It nevertheless contends that it is not amenable to suit here, invoking Rosenberg Bros. & Co. v. Curtis Brown Co., 260 U. S. 516, 43 S. Ct. 170, 67 L. Ed. 372. The United States Supreme Court, however, has advanced beyond the presence theory of jurisdiction underlying that case. McGee v. International Life Insurance Co., 355 U. S. 220, 78 S. Ct. 199, 200, 2 L. Ed. 2d 223; see also International Shoe Co. v. Washington, 326 U. S. 310, 315, 317, 66 S. Ct. 154. Under the minimum contacts test of the International Shoe case regular sales solicitation alone can constitute doing business rendering the foreign corporation amenable to process in actions engendered by such activities. (Citing numerous cases which are omitted for sake of brevity.) Since there is no distinction for jurisdictional purposes between regular selling and regular buying (Sterling Novelty Corp. v. Frank & Hirsch D. Co., 299 N. Y. 208, 210, 86 N. E. 2d 564, 12 A. L. R. 2d 1435; Star v. Elkhorn Coal Co. v. Red Ash Pocahontas Coal Co., D. C., 102 F. Supp. 258, 259), the Rosenberg case is as obsolete for the one as for the other." (Matter in first parenthesis added.)

Another case in point is *Compania De Astral v. Boston Metals Co.* (1954), 205 Md. 237, 107 A. 2d 357, 108 A. 2d 372, 49 A. L. R. 2d 646; certiorari denied 348 U. S. 943. In that case, suit was brought by a Maryland corporation against a Panama corporation to recover damages for breach of a single contract, consisting of two parts, to purchase three vessels of the frigate class which were located in plaintiff's shipyard in Baltimore, Maryland. The activities and negotiations looking toward the

purchase had been conducted partly in Baltimore and partly in New York. Suit was brought by the Maryland plaintiff against the Panama corporate defendant in the Baltimore City Court pursuant to a Maryland statute, which provided that a foreign corporation was subject to suit in Maryland by a resident of that state on any cause of action arising out of a contract made in the state whether or not such foreign corporation was doing business in the state. Defendant moved to quash service claiming, among other things, that the statute, if construed to sustain jurisdiction over it, was unconstitutional as a denial of due process. Defendant was engaged in the business of exporting bananas from South American countries to New Orleans. Its only office and place of business was in Panama. It maintained no office, no place of business, and no representative in Maryland. Its only contacts with Maryland consisted in sending a representative to Baltimore to negotiate the terms of the purchase agreement which it signed in Panama and sent back to plaintiff in Maryland for plaintiff's execution; to send a representative to Maryland to inspect the vessels; to send $80,000 to a Maryland bank to hold as an escrow fund against performance of the agreement; and to carry on communications by mail and by telephone with plaintiff in Baltimore relating to maritime clearance of the registry of the vessels and other details concerned with the purchase agreement. The trial court denied the motion to quash service, and it was upheld by the Court of Appeals of Maryland. The Court found that the contract to purchase the vessels was made in Maryland because the last act giving effect to the contract took place there; hence, there was no doubt that the statute governing jurisdiction applied. More significantly, the court held that the statute

was not a denial of due process and relied principally upon the *International Shoe* case in reaching that result. The court pointed out that the defendant's contacts with Maryland were such as to make it reasonable to subject the defendant to suit in Maryland. The court also stressed the point that not only had the contract of purchase been made in Maryland, but it was to be performed there by delivery of the vessels to defendant's representatives at plaintiff's ship yards in Baltimore. These same circumstances are present in the cases at bar. The promissory notes which form the subject matter of five of the cases were made by petitioners and are payable by petitioners to respondent in Minnesota (R. pp. 22-23).[6] Likewise, the open account purchase forming the subject matter of the sixth action was performed in Minnesota by delivery of the hearing aid products f.o.b. respondent's plant in Minneapolis (R. p. 18, f. 1).

The Maryland Court made no mention of any distinction to be drawn between purchasing activities and sales activities for the purpose of determining the right of a Maryland citizen to subject a non-resident corporation to suit in that state. It considered and discussed only whether the nature of the contacts of the foreign corporation in Maryland were such as to make it reasonable and just to subject the corporation to suit there. This should be the relevant consideration since it was said in *International Shoe*, 326 U. S. 310, 316:

> "* * * But now that the *copias ad respondendum* has given way to personal service of summons or other form of notice, due process requires only that

[6] A promissory note executed and to be performed by payment in Minnesota is a Minnesota contract governed by the laws of Minnesota. *Merchants State Bank v. Sunset Orchard Land Co.* (1924), 158 Minn. 108, 110, 196 N. W. 963.

> in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.' "

Any distinction between purchasing activities and sales activities for purpose of now determining whether due process has been satisfied in the assumption of jurisdiction by any forum state, is purely artificial and should be paid no heed.

The court below very properly, we believe, found it reasonable and just to subject petitioners to the jurisdiction of the courts of Minnesota. Petitioners voluntarily sought and entered upon contracts and extensive business activities with respondent in Minnesota. They took delivery of goods from respondent in Minnesota and contracted to pay for them in Minnesota by delivering their promissory notes to respondent payable in Minnesota. Petitioners have shown no hardship in being compelled to respond to their obligations in the Minnesota courts. Due process has not been denied them.

Respectfully submitted,

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Attorney for Respondent

Of Counsel:
LEVITT, PALMER AND ROGERS

APPENDIX A

STATE OF MINNESOTA, SUPREME COURT.

38030-1-2

The Dahlberg Company,

Respondent,

vs.

Western Hearing Aid Center, Ltd., Dahlberg Western Company, Inc., and Oregon Hearing Center, Inc.,

Appellants.

Pursuant to an order of Court heretofore duly made and entered in this cause it is determined and adjudged that the order of the Court below, herein appealed from, to-wit, of the District Court within and for the County of Hennepin be and the same hereby is in all things affirmed.

And it is further determined and adjudged that respondent herein, do have and recover of appellants herein the sum and amount of One Hundred Ninety-Three and 70/100 Dollars ($193.70) costs and disbursements in this cause in this Court, and that execution may be issued for the enforcement thereof.

Dated and signed February 7, 1961.

By the Court:
MAE SHERMAN,
Clerk.

Statement for Judgment

Statutory costs: $25.00.
Printer: $168.45.
Acknowledgements: $0.25.
Total: $193.70.

April 17, 1961.

Satisfaction of judgment filed.

Therefore the above judgment is duly satisfied in full and discharged of record.

MAE SHERMAN,
Clerk.

Supreme Court

ss.

State of Minnesota

I, Mae Sherman, Clerk of said Supreme Court, do hereby certify that the foregoing is a full and true copy of the Entry of Judgment in the cause therein entitled, as appears from the original remaining of record in my office; that I have carefully compared the within copy with said original and that the same is a correct transcript therefrom.

Witness my hand and seal of said Supreme Court at the Capitol, in the City of St. Paul, May 29, 1961.

MAE SHERMAN,
Clerk.
JOHN McCARTHY,
Deputy